

ASSEMBLY BILL

No. 1943

Introduced by Assembly Member Chu

February 14, 2002

An act to amend Sections 4935, 4937, 4938, 4939, and 4940 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1943, as introduced, Chu. Acupuncture.

Existing law, the Acupuncture Licensure Act, regulates the practice and licensure of acupuncture and establishes the Acupuncture Board to enforce and administer these provisions.

This bill would include the practice of oriental medicine as an aspect of acupuncture for purposes of licensure.

Existing provisions of the act also require the board to establish standards for the approval of schools and colleges offering education and training in the practice of an acupuncturist.

This bill would specify minimum hours of study and practice in specified areas that the board would be required to set. The bill would require a member of clinical faculty to have 5 years experience as a licensed acupuncturist and would provide that board approval of schools and colleges is valid for a period determined by the board, not to exceed 4 years. The bill would also require the board to establish a review process and would authorize the board to revoke, suspend, or otherwise place conditions upon a school or college if the entity fails to meet the requisite criteria at any time.

Existing provisions of the act make any person, other than a physician and surgeon, dentist, or podiatrist, who is not a licensed acupuncturist, guilty of a misdemeanor for the practice of acupuncture or acupuncture

technique involving the application of a needle to the human body, or for the direction, management, or supervision of another person doing so. The act also makes it a misdemeanor for an unlicensed person to hold himself or herself out as engaging in the practice of acupuncture.

This bill would delete the requirement that acupuncture or technique practiced involve the application of a needle to the human body in order for the act to be a misdemeanor. The bill would also add the titles “doctor of oriental medicine” and “Chinese herbal medicine” as terms the use of which constitute holding oneself out as engaging in acupuncture.

By expanding the scope of unlicensed practice of acupuncture and by adding titles that are prohibited to be used by an unlicensed person, the bill would expand existing crimes and impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) In order to encourage the more effective utilization of
4 acupuncture and oriental medicine services, to provide California
5 citizens a holistic approach, and to promote the health, safety, and
6 welfare of the public, the Legislature created the Acupuncture
7 Licensing Act as a framework to establish a profession that would
8 provide these services. Later, the Legislature expanded
9 acupuncturists’ status to that of independent practitioners, and
10 then again, to that of a primary health care profession.

11 (b) There is continued reporting of shortages of qualified
12 primary care professionals who minister to the needs of citizens
13 who suffer from pain, work-related injuries, and other
14 non-life-threatening illnesses. A complete education, including a
15 core knowledge in basic sciences and clinical medicine, is vital and



1 necessary for the effective and efficient delivery of health care
2 services, and for the smooth referral of patients from one health
3 care professional to another within in the modern and highly
4 regulated system of health care.

5 (c) Since educational standards were last determined for
6 acupuncturists in 1984, tremendous changes have occurred in
7 health care that require corresponding changes and improvements
8 in educational standards required for entry into the licensed
9 acupuncturist profession. Among these factors are the facts that:

10 (1) The scope of practice of the licensed acupuncturist has been
11 expanded.

12 (2) Experts have consistently recommended more education.

13 (3) The role of acupuncturists in worker's compensation would
14 benefit from additional training.

15 (4) The public has raised expectations for knowledgeable
16 healing arts professionals.

17 (5) The incorporation of acupuncturists into managed care
18 requires standardized patient assessment, diagnoses, and
19 reporting.

20 (6) Safety issues about herbal medicine and dietary
21 supplements have become common concerns.

22 (7) Standardized clinical examinations previously required for
23 licensure have been eliminated.

24 (8) The World Health Organization has developed
25 internationally standardized nomenclature and training guidelines
26 for acupuncturists.

27 (9) The United States Food and Drug Administration has
28 recognized acupuncture needles as a medical device.

29 (10) The United States Congress has adopted legislation to
30 regulate dietary supplements and herbs.

31 (11) The National Institutes of Health has adopted a Consensus
32 Statement on Acupuncture, recognizing a need for utilizing
33 acupuncture in the American system of health care.

34 (d) For these reasons, and others, the Legislature is making the
35 following changes in standards for training and licensing of
36 acupuncturists in the state.

37 SEC. 2. Section 4935 of the Business and Professions Code
38 is amended to read:

39 4935. (a) Any person who practices acupuncture or holds
40 himself or herself out as practicing or engaging in the practice of

1 acupuncture, unless he or she possesses a current and valid
2 acupuncturist's license, is guilty of a misdemeanor.

3 (b) Notwithstanding any other provision of law, any person,
4 other than a physician and surgeon, a dentist, or a podiatrist, who
5 is not licensed under this article but is licensed under Division 2
6 (commencing with Section 500), who practices acupuncture
7 ~~involving the application of a needle to the human body~~, performs
8 any acupuncture technique or method ~~involving the application of~~
9 ~~a needle to the human body~~, or directs, manages, or supervises
10 another person in performing acupuncture ~~involving the~~
11 ~~application of a needle to the human body~~ is guilty of a
12 misdemeanor.

13 (c) A person holds himself or herself out as engaging in the
14 practice of acupuncture *and oriental medicine* by the use of any
15 title or description of services incorporating the words
16 "acupuncture," "acupuncturist," "certified acupuncturist,"
17 "licensed acupuncturist," "oriental medicine," "*doctor of*
18 *oriental medicine*," "*Chinese herbal medicine*," or any
19 combination of those words, phrases, or abbreviations of those
20 words or phrases, or by representing that he or she is trained,
21 experienced, or an expert in the field of acupuncture, oriental
22 medicine, or Chinese medicine.

23 (d) Subdivision (a) shall not prohibit a person from
24 administering acupuncture *and oriental medicine* treatment as
25 part of his or her educational training if he or she *meets either of*
26 *the following requirements*:

27 (1) ~~Is He or she~~ is engaged in a course or tutorial program in
28 acupuncture *and oriental medicine*, as provided in this chapter; ~~or~~.

29 (2) ~~Is He or she~~ a graduate of a school of acupuncture *and*
30 *oriental medicine* approved by the board and participating in a
31 postgraduate review course that does not exceed one year in
32 duration at a school approved by the board.

33 SEC. 3. Section 4937 of the Business and Professions Code
34 is amended to read:

35 4937. An acupuncturist's license authorizes the holder
36 thereof:

37 (a) *To diagnose within the scope of practice of acupuncture and*
38 *oriental medicine.*

39 (b) *To engage in the practice of acupuncture and oriental*
40 *medicine.*

~~(b)~~

(c) To perform or, prescribe the use of *administer, or dispense* oriental massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and dietary supplements to promote, maintain, and restore health. Nothing in this section prohibits any person who does not possess an acupuncturist's license or another license as a healing arts practitioner from performing, or prescribing the use of any modality listed in this subdivision.

~~(e)~~

(d) For purposes of this section, a "magnet" means a mineral or metal that produces a magnetic field without the application of an electric current.

~~(d)~~

(e) For purposes of this section, "plant, animal, and mineral products" means naturally occurring substances of plant, animal, or mineral origin, except that it does not include synthetic compounds, controlled substances or dangerous drugs as defined in Sections 4021 and 4022, or a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

~~(e)~~

(f) For purposes of this section, "dietary supplement" has the same meaning as defined in subsection (ff) of Section 321 of Title 21 of the United States Code, except that dietary supplement does not include controlled substances or dangerous drugs as defined in Section 4021 or 4022, or a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

SEC. 4. Section 4938 of the Business and Professions Code is amended to read:

4938. The board shall issue a license to practice acupuncture *and oriental medicine* to any person who makes an application and meets the following requirements:

(a) Is at least 18 years of age.

(b) Furnishes satisfactory evidence of completion of one of the following:

(1) An educational and training program approved by the board pursuant to Section 4939.

1 (2) Satisfactory completion of a tutorial program in the practice
2 of an acupuncturist which is approved by the board.

3 (3) In the case of an applicant who has completed education and
4 training outside ~~the United States and Canada~~ *California*,
5 documented educational training and clinical experience which
6 meets the standards established pursuant to Sections 4939 and
7 4941.

8 (c) Passes a written examination administered by the board that
9 tests the applicant's ability, competency, and knowledge in the
10 practice of ~~an acupuncturist~~ *acupuncture and oriental medicine*.
11 The written examination shall be developed by the Office of
12 Examination Resources of the Department of Consumer Affairs.

13 (d) Is not subject to denial pursuant to Division 1.5
14 (commencing with Section 475).

15 (e) Completes a clinical internship training program approved
16 by the board. The clinical internship training program shall not
17 exceed nine months in duration and shall be located in a clinic in
18 this state, which is approved by the board pursuant to Section
19 4939. The length of the clinical internship shall depend upon the
20 grades received in the examination and the clinical training already
21 satisfactorily completed by the individual prior to taking the
22 examination. On and after January 1, 1987, individuals with 800
23 or more hours of documented clinical training shall be deemed to
24 have met this requirement. The purpose of the clinical internship
25 training program shall be to assure a minimum level of clinical
26 competence.

27 (f) Each applicant who qualifies for a license shall pay, as a
28 condition precedent to its issuance and in addition to other fees
29 required, the initial licensure fee.

30 SEC. 5. Section 4939 of the Business and Professions Code
31 is amended to read:

32 4939. (a) The board shall establish standards for the approval
33 of schools and colleges offering education and training in the
34 practice of an acupuncturist, including standards for the faculty in
35 those schools and colleges, and tutorial programs, completion of
36 which will satisfy the requirements of Section 4938.

37 (b) (1) *Standards for the approval of training programs shall*
38 *include a minimum of all of the following:*

39 (A) *Seven hundred fifty hours of didactic and laboratory study*
40 *in basic sciences and clinical medicine.*



1 (B) Eight hundred fifty hours of study in the principles and
2 techniques of traditional oriental medicine.

3 (C) Four hundred fifty hours of didactic and laboratory study
4 in herbal medicine.

5 (D) One hundred hours of study in ethics, hygiene, and practice
6 management.

7 (E) One thousand fifty hours of study and practice in
8 supervised clinical practice.

9 This paragraph shall apply to all students entering programs
10 between January 1, 2003, and January 1, 2007, and to all persons
11 who apply for a license between January 1, 2007, and January 1,
12 2011.

13 (2) Standards for the approval of training programs shall
14 include a minimum of the following:

15 (A) One thousand hours of didactic and laboratory study in
16 basic sciences and clinical medicine.

17 (B) One thousand hours of study in the principles and
18 techniques of traditional oriental medicine.

19 (C) Five hundred hours of didactic and laboratory study in
20 herbal medicine.

21 (D) One hundred hours of study in ethics, hygiene, and practice
22 management.

23 (E) One thousand four hundred hours of study and practice in
24 supervised clinical practice.

25 This paragraph shall apply to students entering programs after
26 January 1, 2007, and to persons who apply for a license after
27 January 1, 2011.

28 (c) Clinical faculty shall be required to have five years
29 experience as a licensed acupuncturist.

30 (d) (1) Board approval of schools and colleges shall be valid
31 for a period of time determined by the board, not to exceed four
32 years, and shall expire at the end of that period.

33 (2) The board shall establish a review process.

34 (3) The board may revoke, suspend, or otherwise place
35 conditions upon a school or college at any time it may be
36 determined that an approved school or college fails to meet the
37 criteria established by the board.

38 (e) Within three years of initial approval by the board each
39 program so approved by the board shall receive full institutional
40 approval under Article 3.5 (commencing with Section 94760) of

Chapter 7 of Part 59 of the Education Code in the field of traditional oriental medicine, or in the case of institutions located outside of this state, approval by the appropriate governmental educational authority using standards equivalent to those of Article 3.5 (commencing with Section 94760) of Chapter 7 of Part 59 of the Education Code, or the board's approval of the program shall automatically lapse.

~~(e) This section shall become operative on January 1, 1997.~~

SEC. 6. Section 4940 of the Business and Professions Code is amended to read:

4940. (a) The board shall establish standards for the approval of tutorial programs for education and training in the practice of acupuncture *and oriental medicine*, that satisfy the requirements of Section 4938. The board shall also establish standards for the approved supervising acupuncturists.

(b) An acupuncturist shall be approved to supervise a trainee, provided the supervisor meets the following conditions:

(1) Is licensed to practice acupuncture *and oriental medicine* in this state and that license is current, valid, and has not been suspended or revoked or otherwise subject to disciplinary action.

(2) Has filed an application with the board.

(3) Files with the board the name of each trainee to be trained or employed and a training program satisfactory to the board.

(4) Does not train or employ more than two ~~acupuncture~~ trainees at any one time.

(5) Has at least 10 years of experience practicing as an acupuncturist and has been licensed in this state for at least five years.

(6) Is found by the board to have the knowledge necessary to educate and train the trainee in the practice of an acupuncturist.

~~The amendments made to this section at the 1993 portion of the 1993-94 Regular Session of the Legislature shall not affect the approval of any supervising acupuncturist which has been issued prior to the effective date of those amendments.~~

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

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